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December 03, 2019

VIA ECF

Honorable Wilhelmina M. Wright
United States District Court
334 Federal Building
316 N. Robert Street
St. Paul, Minnesota 55101

**Re: *Fair Isaac Corp. v. Federal Insurance Co. et al.*,
No. 16-cv-01054-WMW-DTS (D. Minn. filed April 21, 2016)**

Dear Judge Wright,

Fair Isaac Corporation (FICO) respectfully requests permission for the parties to file simultaneous briefing regarding Federal Insurance Company's (Federal) and ACE American Insurance Company's statute of limitations defense.

On August 8, 2019—almost two weeks after the dispositive motion deadline—Defendants filed a motion to amend their Answer to add a statute of limitations defense. (Dkt. 456.) In his oral order on August 26, 2019, Magistrate Judge Schultz granted Defendants' motion, conditioned on Federal providing by November 15, 2019, specific disclosures regarding the installation of Blaze Advisor outside the United States, and presenting in Minneapolis by November 27, 2019, a Rule 30(b)(6) deponent to testify to those disclosures. (Aug. 26, 2019 Hearing Tr., p. 7.)

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Judge Schultz sought to mitigate the prejudice to FICO from Defendants' amendment adding the statute of limitations defense after the close of discovery. He further advised "that FICO . . . could also in light of this order ask for whatever briefing or other timing relief that it could obtain from Judge Wright." (Aug. 26, 2019 Hearing Tr., p. 11.)

Defendants' November 15th disclosure and the testimony of its Rule 30(b)(6) witness admit to installation of Blaze Advisor within the statute of limitations, rendering Defendants' statute of limitations defense futile. FICO appealed Judge Schultz's Order permitting the amendment, with futility being a significant issue. (Dkt. 530.) Defendants argued the statute of limitations defense for the first time in their opposition to FICO's summary judgment. (Dkt. 507 at 37). In both instances, the Court is presented with the statute of limitations defense without the benefit of the November disclosures ordered by Judge Schultz. In short, the record before the Court on the statute of limitations issue is incomplete, to the prejudice of FICO.

So the Court may be fully informed of the evidence and legal nature of Defendants' statute of limitations defense prior to the December 18, 2019 dispositive motion hearing, FICO requests that the Court permit the parties to submit simultaneous briefs of no more than six (6) pages by Friday, December 13, 2019¹, addressing whether Defendants' statute of limitations defense is futile in light of Defendants' November 15th disclosure and November 26th 30(b)(6) deposition.

Respectfully submitted,



Allen Hinderaker

AWH:can
cc: All Counsel of Record (Via ECF)

¹ The transcript of the November 26, 2019 30(b)(6) deposition is expected by Friday, December 6, 2019.